

## **SIGNATURES AND THE USE OF COUNTEROFFER FORMS**

Section 54-2051(2), Idaho Code, states: “Immediately upon receiving any offer to purchase signed and dated by the buyer and any consideration, a broker or salesperson shall provide a copy of the offer to purchase to the buyer as a receipt.”

In an effort to avoid illegible alterations on the purchase and sale agreements, “counteroffer” forms should be used to make any changes to the original offer. Section 54-2051(3) and (4)(a), Idaho Code, states:

### **54-2051. Offers to Purchase.**

(3) Upon obtaining a properly signed and dated acceptance of an offer to purchase, the broker or sales associate shall promptly deliver true and legible copies of such accepted offer to both the buyer and the seller.

(4) The broker or sales associate shall make certain that all offers to purchase real property or any interest therein are in writing and contain all of the following specific terms, provisions and statements:

(a) All terms and conditions of the real estate transaction as directed by the buyer or seller;

The signatures must be obtained in a manner which will effectuate a “proper acceptance” of the offer.

The question has arisen: when a “counteroffer” form is used in addition to the original purchase and sale agreement, should the seller sign BOTH the original purchase and sale agreement AND the counteroffer form, or should the seller sign ONLY the counteroffer form?

If the counteroffer form contains specific language incorporating it by reference into the original agreement, it is not MANDATORY that the seller sign both documents. The seller may sign the counteroffer only. However, if the counteroffer form does NOT contain specific “incorporation” language, the seller must sign both documents and reference the attached counteroffer on the original purchase and sale agreement.

OR, it is also permissible for the seller to sign the original purchase and sale agreement and include, at the signature line, a reference to the counteroffer to which it pertains.

The important point to remember is that any time a counteroffer is used, both documents must properly “track” or identify exactly which offers are the accepted offers. For instance, the signature line on the original offer might be signed by the seller in the following way: “(signed) John W. Doe/acceptance subject to the counteroffer of July 1, 2000, 1:30 p.m.”. Identification should be done with as much specificity as possible. Clearly, having a seller sign an original purchase and sale

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agreement which does not reference a counteroffer and which does not reflect the actual agreement between the parties would be improper.

Any and all questions about the effectiveness of the offer and acceptance in a specific case should be referred to the attorney for the seller or buyer.

The Idaho Real Estate Commission does not produce or approve, in any manner, any of the purchase and sale agreements, counteroffer forms, addendums or any other forms for use in the state of Idaho.